

The State of South Carolina

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January 16, 1987

John Evans, RRT
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Dear Mr. Evans:

In a letter to this Office you questioned whether an individual can use the title of respiratory therapist or respiratory therapist technician if he is not licensed by this State.

Pursuant to Act No. 403 of 1986, the practice of respiratory therapy became regulated in this State. Such Act establishes the Respiratory Care Committee and authorizes such Committee to certify individuals as respiratory care practitioners. See: Section 40-47-600. The term respiratory care practitioner is defined by Section 40-47-510(e) as "... a respiratory therapist or a respiratory therapy technician certified to practice respiratory therapy...."

Section 40-47-520 states that individuals who hold themselves out as respiratory therapists and respiratory therapy technicians, and who are employed to provide respiratory therapy procedures for inpatients, outpatients and home patients, must be certified in accordance with other provisions of Act No. 403. Such Act in Section 40-47-530 specifically provides, however, that it does not affect:

(a) any person employed to provide respiratory care by the United States government if he provides respiratory care solely under the direction or control of the organization by which he is employed;

(b) any person pursuing a course of study leading to a degree or certificate in respiratory therapy in a program accredited by the American Medical Association in collaboration with the Joint Review Committee for Respiratory Therapy Education if the activities and services constitute a part of a supervised course of study and if he is designated by a title which clearly indicates his status as a student;

(c) any individual or other health care professional who is licensed by the State or who by passage of an examination certified by the National Council of Health certifying agencies, has proven his competency in one or more of the functions included in the definition of the practice of respiratory care as long as he does not represent himself as a respiratory care practitioner;

(d) a respiratory therapy student who may be employed and works under the direct supervision of a respiratory care practitioner and practices to his level of proven clinical competency as certified by an American Medical Association approved program;

(e) any employee of a licensed hospital in this State when performing services commonly within the definition of respiratory care as long as the services are performed within the course and scope of his employment as an employee of the hospital. No regular employee of a licensed hospital in this State is required to be licensed as a condition of employment by or for performance of these services as long as he does not represent himself as a respiratory care practitioner.

Section 40-47-660 further provides that it is illegal for an individual not certified in compliance with Act No. 403 to hold himself out as a respiratory care practitioner, respiratory therapist, or respiratory therapy technician. A penalty of a fine of not more than three hundred dollars or a term of imprisonment of not more than ninety days, or both, is provided for such a violation.

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As to your particular question concerning whether an individual can use the title of respiratory therapist or respiratory therapist technician if he is not licensed, generally unless an individual comes within one of the exceptions provided in Section 40-47-530, he must be certified in accordance with Act No. 403 to hold himself out as a respiratory therapist or respiratory therapy technician. However, I would note further that pursuant to Section 40-47-530 (b), (c), and (e), even if an individual falls within the exceptions of such provisions, he is not authorized to hold himself out as a respiratory care practitioner.

In your second question you referenced subsection (e) of Section 40-47-530 quoted above which pertains to certain hospital employees. You have asked whether individuals may practice respiratory therapy in this State so long as they do not represent themselves as a respiratory care practitioners. You also asked whether individuals who perform respiratory therapy duties are prohibited from using the title of respiratory therapist or respiratory therapy technician. I assume you are referencing individuals who are not certified.

As referenced above, Act No. 403 was enacted to regulate the respiratory therapy practice in this State and to provide a mechanism for individuals to be certified as respiratory therapists or respiratory therapy technicians. The terms "respiratory care" or "respiratory therapy" are defined by Section 40-47-510 (c) as

... the allied health profession or specialty which provides educational, therapeutic, or diagnostic procedures utilized in the prevention, detection, and management of deficiencies or abnormalities, or both, of the cardiopulmonary systems.

The "practice of respiratory care" is defined by Section 40-47-510 (d) as including

... the transcription of a verbal order into patient records for co-signature by the ordering physician and implementation of the physician's written and verbal orders which pertain to the practice of respiratory care if this practice is specifically authorized by the medical director and the health care facility where the care is taking place. In

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the delivery of respiratory home care this practice must be specifically authorized by the physician sponsor.

It is apparent from reading Act No. 403 in its entirety that it was intended that the practice of respiratory therapy in this State be regulated. In order for an individual to engage in such practice, such individuals must be certified as referenced above. Therefore, unless specifically exempted by Act No. 403, an individual may not practice respiratory therapy in this State unless he is certified. Moreover, as indicated above, pursuant to Sections 40-47-520 and 40-47-660 individuals may not use the title respiratory therapist or respiratory therapy technician unless certified or unless they meet one of the specified exceptions. However, as noted, for those individuals covered by the exceptions noted in Section 40-47-530 (b), (c), and (e), even if an individual falls within a particular exception, such as that for a hospital employee, he is not authorized to hold himself out as a respiratory care practitioner.

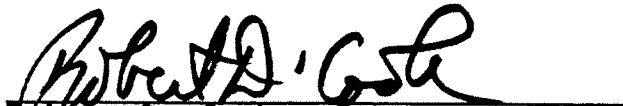
With best wishes, I am

Very truly yours,


Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:


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